



POLICE DEPARTMENT

May 28, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective Thomas Woods
Tax Registry No. 923384
Narcotics Borough Bronx
Disciplinary Case No. 2014-12398

The above-named member of the Department appeared before me on April 16, 2015, charged with the following:

1. Said Detective Thomas Woods, on or about April 8, 2013 at approximately 1345 hours, while assigned to the Narcotics Borough Bronx Command and on duty, in the vicinity of [REDACTED], abused his authority as a member of the New York City Police Department, in that he frisked Person A without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 – STOP AND FRISK

2. Said Detective Thomas Woods, on or about April 8, 2013 at approximately 1345 hours while assigned to the Narcotics Borough Bronx Command and on duty, in the vicinity of [REDACTED], abused his authority as a member of the New York City Police Department, in that he frisked William McCutchen without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 – STOP AND FRISK

3. Said Detective Thomas Woods, on or about April 8, 2013 at approximately 1345 hours, while assigned to the Narcotics Borough Bronx Command and on duty, in the vicinity [REDACTED] abused his authority as a member of the New York City Police Department, in that he searched Person A without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 – STOP AND FRISK

4. Said Detective Thomas Woods, on or about April 8, 2013 at approximately 1345 hours, while assigned to the Narcotics Borough Bronx Command and on duty, in the vicinity [REDACTED], abused his authority as a member of the New York City Police Department, in that he searched William McCutchen without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 – STOP AND FRISK

The Civilian Complaint Review Board ("CCRB") was represented by Nicole Junior, Esq., and Respondent was represented by Michael Lacondi, Esq. CCRB presented the testimony of William McCutchen and Jennifer Jarett, a CCRB supervisor of investigators. A transcript and audio recording of Person A were also admitted into evidence. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. Respondent called Sergeant Pete Massa as a witness and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

After evaluating the testimony and evidence presented at the hearing, and assessing the credibility of the witnesses, this tribunal finds Respondent guilty of Specifications 1, 2, 3 and 4 and recommends that Respondent forfeit three (3) vacation days.

FINDINGS AND ANALYSIS

Respondent is charged with frisking and searching two individuals, Person A and William McCutchen, without having sufficient legal authority to do so.

Person A, McCutchen and a third man were stopped by Respondent and Massa on or about April 8, 2013 in the vicinity of 2556 Davidson Avenue in the Bronx.

According to the Respondent and Massa they stopped the three individuals because they believed they saw a drug transaction take place when either McCutchen or Person A passed a small object to the third man. A packet of what turned out to be marijuana was found in the third man's hand. The third man was given a summons. Respondent has not been charged with a wrongful stop, so the validity of the stop is not at issue here.

With regard to the frisk, it is undisputed that after they were stopped, a frisk of both Person A and McCutchen was conducted by Respondent. McCutchen described Respondent patting down his and Person A's legs, torso and arms. (Tr. pp. 21-24). Massa confirmed that Respondent patted down Person A and McCutchen. (Tr. pp. 99-100). Respondent's position was that he didn't remember frisking the two individuals, but he did not dispute a frisk was done and he testified that he "most likely" frisked them. (Tr. 159, 184).

With regard to the search issue, McCutchen described Respondent as searching inside his shoes and inside of his underwear. He testified that Respondent, skin to skin, touched his scrotum and looked down at his buttocks area. (Tr. pp. 29-31, 39). He stated that Respondent placed his hands in all of his pockets and took a cellphone and a Chapstick from his pockets (Tr. pp. 31-32). McCutchen testified

that he saw Respondent take a cellphone and wallet from Person A. (Tr. p. 32). Person A, in his hearsay statement, also described Respondent patting him down “numerous times” through his layers of clothing (CCRB X 2, pp. 27-29) and then touching him under his underwear in his “pubic” region. (CCRB X 2, pp 28-29). Person A stated that Respondent went into his pockets and took out his phone and his keys. (CCRB X 2, p.30). Massa testified that Respondent searched “wherever he recovered the phone from.” (Tr. 131). Respondent did not recall “producing” a cell phone from either of the individuals. (Tr. p. 174).

I find that based on the credible evidence Respondent conducted a frisk and search of McCutchen and Person A. The issues remaining are whether Respondent had sufficient legal authority to conduct the frisks and searches of either individual. I find that he did not.

Under Patrol Guide 212-11- Page 1, Paragraph 3, a uniformed member of the service may frisk an individual if he or she reasonably suspects that they or others are in danger of physical injury. A search may be conducted if the frisk reveals an object that may be a weapon. In this case, Respondent, who didn’t remember doing the frisks, initially merely provided reasons for why he **would** (emphasis added) have frisked the two individuals. (Tr. p. 160). On direct examination, when asked, “Why would you have frisked this—these two individuals?” Respondent replied, “I believe that anyone engaging in a marijuana sale in this high-violence

area likely could be carrying a gun, as well.” (Tr .p. 160). Respondent’s counsel, assuming a recollection of the frisk, next asked, “Now, was there anything else that led you to frisk these individuals?” and Respondent answered,

In addition to the possibility that one of them had a weapon, there was three of them and two of us. It’s –it’s—it’s –we’re outnumbered. They’re younger than us. Upon approach, I believe that there was a possibility that they would run. So all this led me to believe that maybe they could have been carrying a weapon. (Tr. 161).

This testimony does not provide justifiable reasons to conclude that anyone was in danger of physical injury at the time of the frisks. Massa did not provide any valid reasons for the frisks either. According to Massa, the two men were frisked because one man seemed evasive and seemed as if he wanted to run, and also because there had been a lot of shootings in the neighborhood and “narcotics and guns seem to go together.” (Tr. P. 93).

Having concluded that Respondent had no justifiable reason to frisk either individual, he therefore had no right to go beyond the frisk and search either individual. Respondent is found Guilty of Specifications 1, 2, 3, and 4.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974).

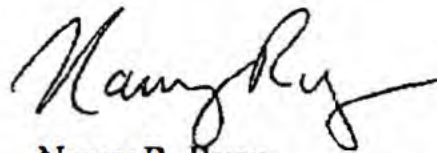
Respondent was appointed to the Department on August 31, 1998. Information from his personnel file that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of frisking and searching Person A and McCutchen without sufficient legal authority. CCRB has asked for a penalty of eight vacation days. Given recent cases, this penalty recommendation seems excessive. In *Disciplinary Case No. 2013-9658* (Nov. 26, 2014), a three-year police officer with no prior disciplinary record forfeited one vacation day for frisking and searching complainant without sufficient legal authority and failing to courteously and clearly state his shield number upon request. In *Disciplinary Case No. 2010-9939* (Jan. 26, 2015), a nine-year police officer with no prior disciplinary record forfeited three vacation days for frisking and searching complainant without sufficient legal authority. In *Disciplinary Case Nos. 2013-9653 & 2013-9654* (Feb. 19, 2015), two eight-year members without prior disciplinary records also forfeited three vacation days for stopping, frisking, and searching complainant without sufficient legal authority. In *Disciplinary Case No. 2013-9623* (Mar. 4,

2015), a nine-year police officer with no prior disciplinary record received a reprimand for frisking and searching complainant without requisite legal authority.

Based on the foregoing, it is recommended that Respondent forfeit a penalty of three vacation days.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner – Trials

APPROVED

JUN 22 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

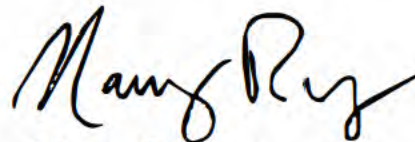
**POLICE DEPARTMENT
CITY OF NEW YORK**

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE THOMAS WOODS
TAX REGISTRY NO. 923384
DISCIPLINARY CASE NO. 2014-12398

Respondent was appointed to the Department on August 31, 1998. His last three annual performance evaluations were as follows: he received a 4.5 "Highly/Extremely Competent" in 2014, and a 4.0 "Highly Competent" in 2013 and 2012. [REDACTED]
[REDACTED]

On November 6, 2014, he was placed on Level 1 Force Monitoring as a result of receiving three or more CCRB complaints in a one-year period. He has no other formal disciplinary record.

For your consideration.



Nancy R. Ryan
Assistant Deputy Commissioner Trials